THE AWARDS AGAINST VENEZUELA.

MR. FISH'S LETTER REVIEWED.

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TALMAGE'S CONTRADICTIONS.

"Truth is always consistent—Falsehood is contradictory, and requires explanation."

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THE AWARDS AGAINST VENEZUELA.

FISH'S LETTER REVIEWED—TALMAGE'S CONTRADICTORY TESTIMONY.

THE counsel for the joint commission of the United States and Venezuela, under the convention of April, 1866, and for certain holders of certificates issued by it, have published since the close of the argument before the House Committee on Foreign Affairs the letters of Mr. Seward, Mr. Washburne, and Mr. Fish, in relation to the request of Venezuela for the appointment of a new commission.

Mr. Seward's letter was written only six months after the adjournment of that commission, in answer to the first protest of Venezuela, and before the evidence of the fraud and corruption of the commission was or could have been collected and submitted to the State Department; and the only part of that letter pertinent to the case recently made up and submitted to the Congress of the United States for its action, is the following paragraph:

"It is not necessary for this Government to deny that no man can be a judge in his own cause, or in one in which he has the minutest interest. We might admit that if it were capable of proof that Mr. Talmage was thus interested in any claim at the time he assumed to sit in judgment upon it, the fact would show such personal disqualification that in respect to such claim his action might be regarded as would be that of a stranger who, without color of authority, usurped the functions of commissioner. In such a case we might agree that the Government concerned would be at liberty to treat the awards made by his aid as absolute nullities, and to submit the cases to the consideration of a new commission."—*Sen. Ex. Doc., No.* 5, 41*st Congress, 1st Session, p.* 8 *and* 9.

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Upon the doctrine announced by Mr. Seward in that paragraph, and the proofs of fraud and corruption, and personal interest, on the part of the commission, Venezuela is clearly entitled to a revision of its awards, and she asks that they may be treated as "*absolute nullities*," and that the cases may be submitted to the "*consideration of a new commission.*"

Mr. Washburne was Secretary of State but a very few days, and during his brief incumbency of that office, which was at the beginning of President Grant's first term, he was too fully occupied with other matters of great importance, requiring immediate attention, to be able to bestow upon the subject to which his short letter relates any personal examination; nor was the evidence of corrupt and fraudulent practices then in the department. There was none of the evidence there, except such as is contained in the archives of the commission, which Mr. Washburne could not have examined.

The case of Mr. Fish is quite different. At the date of his letter to Mr. Russell he had had sufficient time to examine the matter fully. His communication is full of errors, fallacious argument, and unfairness. According to the testimony of Mr. Nobles, he was aware of the existence of positive evidence of the fraudulent character of the commission. He had by a menace repelled it—driven it from the department. The irregularities in the matter of the appointment of the umpire had then been fully exposed in the very able communication of Mr. Paul, and the facts since developed before the Committee on Foreign Affairs in relation to that appointment must have been known to him. Yet he mis-states the facts as follows:

"In a note of the 27th of February, Mr. Stoeckl informed Mr. Seward "that he had endeavored to act in the matter in a way worthy of the confi-"dence reposed in him; and that, after due inquiry, he had determined to "appoint Juan N. Machado, Jr., as the umpire, he being an impartial and "respectable person in the highest degree."

"In this selection the Russian Minister appears to have acted upon his "own information and judgment, and to have set aside the persons who "had been named by the respective governments, both of which acquiesced "in the appointment made by the Russian Minister, and proceeded with the "business before the commission now thus fully constituted."—*H. R.* 787, *44th Congress, 1st Session, p.* 38.

The truth is, that Baron Stoeckl appointed *Mr. Machado* and the name of *Juan N. Machado, Jr.*, to be substituted for *Mr.* Machado, was furnished by Mr. Talmage, after Juan N. Machado, Jr., his agent and attorney in fact, had been illegally sworn in as umpire, as will be seen by the following letter:

"CARACAS, April 7th, 1868.

"SIR: I am notified by Thomas N. Stilwell, United States minister resi-
" dent at this legation, that Mr. Edward de Stoeckl, the diplomatic rep-
" resentative of Russia in Washington City, on the previous invitation of
" the governments of the United States and Venezuela, had been pleased to
" name Juan N. Machado as umpire, under the convention between the
" United States and Venezuela, concluded at Caracas, April 25th, 1866.

" Our minister resident, Thomas N. Stilwell, has notified Juan N. Machado,
" Jr., of his appointment as umpire, he being undoubtedly the person in-
" tended, and not the father, Juan N. Machado, Sr., who is disqualified,
" being aged and infirm.

" I mention this circumstance so that the person intended be particularly
" designated, so as to prevent any possibility of misunderstanding in the
" future.

" The business of the commission will now proceed.

" I have the honor to be your obedient servant,

" DAVID M. TALMAGE.

" HON. WILLIAM H. SEWARD,
"Secretary of State," etc.

—*Mis. Doc.*, 30 *App. A.*, p. 8.

If, as alleged by Mr. Talmage, Mr. Stilwell notified him that the Russian minister had appointed Juan N. Machado as umpire, his statement in that regard was untrue. Baron Stoeckl had named for that office simply Mr. Machado, and the notification of appointment given to Juan N. Machado, Jr., one—and probably the least competent one—of many *Mr. Machados* in that country, was wholly unauthorized. It was a selection of an umpire by the American minister in violation of the provisions of the convention. There is no evidence whatever that Baron Stoeckl intended to designate Juan N. Machado, Jr., for that responsible office. Mr. Talmage's consciousness of the illegality of that gentleman's investment with the office of umpire appears from the above letter, intended to secure its ratification by

the Russian minister, and thus, if possible, cure a fatal defect in the legality of the commission so constituted.

Mr. Fish's statement, that the "commissioners jointly adopted rules and regulations which were set forth in the minutes of their proceedings, which are similar to those adopted in other cases, and do not appear to contain anything of an unusual or unreasonable nature," is erroneous.

The rules were not all adopted by the commissioners; the third and sixth (originally the seventh) rules, which were of a *very* "unusual or unreasonable nature," were adopted by Mr. Talmage and the umpire over the protest of the honest Venezuelan commissioner, Condé, who, in regard to the sixth, put on the record of the commission (which was in the hands of the Secretary of State at the date of his letter) the following very just criticism and objection:

"It is said '*shall issue certificates*,' not because there is a necessity of giving "more than one to each claimant, but because *several are being spoken of*. "The commission, moreover, is not obliged to accommodate its acts to the "convenience of the interested parties; it does not know them, nor does it "consult them; nor should it increase its labors, already so urgent, in order "to meet their wishes. They can communicate with their government, or "the legation, which may represent it, not with the commissioners. Add "to this that the *division of the indemnities very probably might arouse in the "public mind a suspicion that their product would be divided among several "persons, which would tend to the detriment of the honor and probity of the "commission.*"—*Mis. Doc.*, 30 *App. A.*, p. 16.

It is true, as stated by Mr. Fish, that the "awards were thus subdivided in fractional amounts, and separate certificates issued therefor by the joint act of the Venezuelan and the American commissioners, each of whom signed the certificates;" but these certificates were signed by the Venezuelan commissioner because he was required to sign them by the rules adopted by Mr. Talmadge and the umpire, Machado, in spite of the opposition and protest of the commissioner for Venezuela.

That government was not "by her own *commissioner* a *voluntary assenting party*" to the subdivision of the awards and the issuance of several certificates in each case, as Mr. Fish alleges.

The distinguished Secretary's inaccuracies of statement are most surprising.

Returning to the subject of the appointment of an umpire, Mr. Fish says:

"It may here be stated that the gentleman named as umpire by the Rus-
"sian minister was not suggested by the government of the United States,
"which was desirous of the appointment of a different person, but acqui-
"esced in a selection made in pursuance of the terms of the treaty."—*H. R.*, 787, 44*th Cong.*, 1*st Sess.*, p. 40.

In connection with that statement, read the following letter of Mr. Seward to the Russian minister:

"WASHINGTON, April 22d, 1861.

"DEAR SIR: Upon turning to your note appointing the arbiter under the
"convention between the United States and Venezuela, it is noticed that
"you accidentally omitted his Christian name. As it is desirable that the
"omission be supplied, you will oblige me by either withdrawing the origi-
"nal note and substituting another of the same date with the full name of
"the person intended to be appointed, Juan N. Machado, junior, or by ad-
"dressing to me a supplementary note, stating that it was your intention to
"appoint that gentleman.

"I am, very truly, yours,

"W. H. SEWARD.

"MR EDWARD DE STOECKL,

"etc., etc., etc."

—*Miss. Doc.*, 30, p. 30.

Having been informed by Mr. Talmage that Juan N. Machado, junior, had been designated by Mr. Stilwell, and knowing that he was then performing the duties of umpire, Mr. Seward requested Baron Stoeckl to name that gentleman for that office.

Attempting to defend Mr. Talmage's extraordinary conduct in becoming the agent of claimants and their pretended attorneys to receive and *divide* the proceeds of the awards to be made by him, Mr. Fish says:

"He was not attorney for the parties to prosecute their claim or to advo-
"cate it before the Commission, but only to take care in their behalf of the
"evidence or certificates that might be awarded to them."

The fact is, that Mr. Talmage was not the attorney of the parties for the purpose of *taking care in their behalf* of the evidence or certificates which might be awarded them, but he was their attorney to receive and *divide* them—giving to pretended attorneys from thirty-three to sixty per cent. of the awards that might be made upon claims to be passed upon by the commission of which he was a member, and this was fully understood by Mr. Fish, as copies of the papers were in his hands.

Speaking of the "distributive proportion" of the Venezuelan customs-dues to which the United States were entitled, Mr. Fish says that payment was "refused except on condition that the United States will allow Venezuela to *dictate* to which of the citizens of the United States who have suffered at the hands of Venezuela, and whose claims have been adjudicated, the money shall be distributed." Venezuela *did not attempt to dictate* to whom the money should be distributed, but only protested against its distribution until it could be decided by a new, honest, and competent commission to whom it should be paid; and the argument in her behalf has been confined to demonstrating the fraudulent character of the commission itself, in order that all claims may go before a new commission upon their merits without being prejudiced by discussion here.

Again he says:

"Venezuela advances the right to review all the claims, and constituting "herself as judge in her own case, stops payment until the claims to which "payment shall be applied shall be liquidated and recognized. In a subse- "quent note to you from the same gentlemen (Mr. Jesus M. Blanco), "of the date of the 11th of June last, he puts forth for the first time an "entirely new statement. Venezuela, he says, maintains that no judgment "exists because no competent tribunal existed, and that no competent tribu- "nal existed because it cannot be agreed or even imagined that one of the "contending parties should be a judge in any case. This statement is put "forth while Venezuela is constituting herself the judge of last resort in "reversal of the decision in a case before an international tribunal between "her and the United States, Venezuela both party and final judge."

It is unhesitatingly affirmed that nowhere in the correspondence between the two governments can there be found any authority for that statement. Does a party to a suit constitute

himself *final judge* by asking a new trial on the ground of fraud and corruption? Is it an assumption of judicial functions for a party, who has been defeated by bribery, to ask the justice of a rehearing by an unbribed and honest court? "Surely all logic is rejected in arriving at such a charge."

That the United States government and the government of Venezuela were the parties to the proceedings before the mixed commission, and not Venezuela and the citizen claimants, is asserted strongly by Mr. Fish, as follows:

"By the terms of the treaty the money awarded by the commission is "payable to the government of the United States. It is a debt due by "Venezuela to the United States, not to any particular citizen of the United "States. It is one aggregate sum, not a variety of separate indebtednesses, "some of which may be distinguished and segregated from others."

And again:

"After the award the debt became one from Venezuela to the United "States, and the former government had no concern thereafter with the "individual claimants."

Thus Mr. Fish, while mis-stating the facts of the case, and lamely attempting to defend the doings of the commission, admits the important point that this is a question to be settled between the two governments, and in the settlement of that question the relation of claimants to the matter can have no controlling influence; that it is a question to be decided upon the principles of international comity and fair dealing.

It will be observed that neither of the distinguished gentlemen who have held the high office of Secretary of State since the question pending between the governments of the United States and Venezuela arose, intimates in the letters referred to, any doubt whatever of the power and right of the United States to take the action and grant the relief desired by Venezuela, but that, on the contrary, they assert that power by the strongest implication, if not in express terms. No doubt on that point has ever been entertained by either branch of the government.

Talmage's Contradictory Statements.

Before the House Committee of Foreign Affairs, Forty-first Congress, he made a statement carefully concealing his interest

in the proceeds of awards by the commission, and made oath to its correctness, as follows:

"THE HONORABLE, THE COMMITTEE ON FOREIGN AFFAIRS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA.

"I have written the foregoing voluntarily, from considerations of public "policy, and now proceed to make oath as to the statements therein made, "that claimants may have the benefit thereof as against the government of "Venezuela, seeking to set aside the awards of the commission.

"DAVID M. TALMAGE.

"Sworn to, and subscribed before me, this 28th day of April,
[SEAL.] "1870. EDM. F. BROWN,
"Notary Public."

House Rep. 79, 41*st Congress*, 2*d Session*, *page* 10.

Before Mr. Springer's committee he testified as follows:

"Q. Were you agent or attorney for anybody who did own them (certi- "ficates)? A. I may have been acting for others.

"Q. In what way for others? A. Simply assisting them.

"Q. As their attorney, friend, or what? A. I was doing it for the sake "of personal vindication.

"Q. Solely? A. I was here solely for that.

"Q. Did you receive any monetary consideration for your services from "the owners of those certificates? A. I have received monetary compensa- "tion.

"Q. How much? A. I cannot tell you the exact amount.

"Q. Did you receive as much as $1000? A. Yes.

"Q. As much as $5,000? A. Yes.

"Q. As much as $10,000? A. Yes.

"Q. As much as $20,000? A. I think not. I cannot be certain.

"Q. It was about $20,000, was it not? A. I would not like to swear to "the amount.

"Q. Was it nearer $20,000 than $10,000. A. I think so."—*House Rep.* 787. 44*th Congress*, 1*st Session*, *pp.* 90, 91.

Before the committee of the present Congress, he confessed to being owner of certificates continuously since 1869, as follows:

"MR. PILE.—I insist on an answer to my question—answer my question.

"THE WITNESS.—I at first bought certificates in 1869, I think, but as to "the particular date of buying certificates I cannot tell.

"Q. You first became owner of certificates in 1869. A. Yes, sir.

"Q. Were you an owner in your own right of any certificates when you "wrote this letter of February 10th, 1869. (Letter to Stilwell, H. Rep. 787, "pape 187). A. I do not know whether I was or not.

"Q. If not an owner at that date, you became an owner some time "during that winter? A. I think so."

* * * * * * * * * * * * *

"Q. When after that date did you buy other certificates? A. I bought "them all along at different times; every winter up to the time I was taken "sick, in 1873–'74."—*Mis. Doc.* 30, 45*th Congress*, 2*d Session*, *p.* 56–7.

Before Mr. Springer's committee he swore that he did not buy certain certificates from Murray, as follows:

"Q. From whom did you ever buy any? A. I was interested in some I "bought from Murray.

"Q. Those certificates that you bought from Murray, did they have the "*name of Seth Driggs as payee?* A *No, sir.*"—*H. R.* 787, 44*th Congress*, 1*st Session*, *p.* 92.

Before the committee of the present Congress he positively contradicted the above.

"Q. Can you state from whom you bought them (certificates)? A. Yes; "I bought from Mr. Murray.

"Q. All that you owned that winter you had bought from Mr. Murray? "A. Yes, sir.

"Q. What price did you pay for certificates? A. All the way from ten "cents to forty cents on the dollar.

"Q. For those certificates that you bought from Murray? A. I do not "know at what price I bought them.

"Q. Do you know approximately? A. I think I paid ten cents on the "dollar for some, and twenty to twenty-five cents for others."

* * * * * * * * * * * * *

"Q. But you bought of nobody except Mr. Murray in that particular "winter? A. No, sir.

"Q. Do you think that you bought as much as fifty thousand dollars' "worth that winter? A. No; I do not think I did.

"Q. As much as twenty-five thousand dollars' worth? A. I think it "very likely; I cannot tell.

"Q. When, after that date, did you buy other certificates? A. I bought "them all along at different times; every winter up to the time that I was "taken sick, in 1873–'74.

"Q. *Did you buy any certificates from Mr. Murray that were issued on ac-* "*count of the claims of Mr. Seth Driggs?* A. *Yes, sir; I did.*"

Talmage was flatly contradicted by Judge Orth. Mr. Springer asked Mr. Orth the questions:

"Q. Did you receive compensation from Stilwell as well as from Tal-
"mage? A. Yes; from both of them."

* * * * * * * * * * * * *

"Q. Was any portion of the compensation that you received paid to you
"in these certificates? A. *Yes;* I think I probably got seven of these thou-
"sand dollar certificates Then I got money enough to pay my expenses,
"and a reasonable fee.

"Q. Did these certificates come through Stilwell or Talmage? A. They
"came through both of them.

"Q. Which furnished the greater part? A. I think that Talmage fur-
"nished the greater part."—*H. R.*, 787, *44th Cong.*, *1st Sess.*, pp. 74, 76.

Mr. Springer asked Mr. Talmage the following questions:

"Q. There was an act passed the 25th of February, 1873, declaring that the findings of the mixed commission were final and conclusive on the Venezuelan government. *Did you employ Mr. Orth to secure the passage of that act?* A. *No, sir.*

"Q. Did you *pay him anything for his services in relation to it?* A. I *did not.*"—*Above Report*, p. 88.

Before Mr. Springer's committee Talmage testified as follows:

"Q. Did you have any object, then, in making the certificates of greater
"value than they were? A. I had no object of that kind.

"Q. Did you own any of the certificates at that time? A. Not that I
"know of.

"Q. Did you own any certificates in your own right, or did you have any
"of them in your possession, in the increase of the value whereof you were
"interested at the time that Mr. Orth was acting as your attorney? A. Not
"that I know of."—*H. R.*, 787, *44th Cong.*, *1st Sess.*, p. 88.

Before the committee of the present House he was asked:

"Q. And were you at that time the owner of certificates issued in the matter
"of the claims of Seth Driggs—I mean while Mr. Orth was acting as at-
"torney for yourself and others? A. I really do not know; I may have
"been.

"Q. What is your recollection on that subject? A. I think it likely that
"I may have owned some of those certificates at that time.

"Q. And of the denomination of $1000? A. I think so."

If the relation of Mr. Talmage to this affair had been that of an honest, upright officer, there would have been no necessity

for such prevarications, contradictions, and falsifications as are contained in the above testimony. They demonstrate a labored effort to disguise the facts, and prove and confirm the evidence of fraud to be found upon almost every page of the testimony and the history of this disgraceful transaction.

The character of the claims has not been discussed in detail, for the reason that fraud in the procurement of the awards vitiates them, whatever the character of the claims may have been, and it was desired that each claimant should have the privilege of going before the new commission (if one should be agreed upon) unprejudiced, and have his claims decided upon their merits; but, in order that the omission to discuss the character of the claims may not be understood as an admission of their validity and justice, it is distinctly stated that a majority of the claims, in number and amount, allowed, were unjust and unsupported by proper evidence; and they would not have been allowed but for the corrupt arrangement for the division of the proceeds with Talmage, Stilwell, Murray, and others.

The able report of the Committee on Foreign Affairs of the Forty-fourth Congress, prepared by Mr. Springer, contains a clear statement of the facts and law with respect to each case treated of, and that report is adopted as our analysis of the claims.

To such claims, and to such a commission, the following language of the distinguished publicist, Vattel, is peculiarly applicable.

"When sovereigns cannot agree about their pretensions, and are nevertheless desirous of preserving or restoring peace, they sometimes submit the decision of their disputes to arbitrators chosen by common agreement. When once the contending parties have entered into articles of arbitration, they are bound to abide by the sentence of the arbitrators; they have engaged to do this, and the faith of treaties should be religiously observed. If, however, the arbitrators, by pronouncing a sentence evidently unjust and unreasonable, should forfeit the character with which they were invested, *their judgment would deserve no attention.* The parties had appealed to it only with a view to the decision of doubtful questions.—*Vattel's Law of Nations, by Chitty, from new edition; vide* pp. 277 and 278.